cussing the leading principles of the decisions of the Interstate Commerce Commission, showing how the Commission has in the brief period of its existence evolved a tolerably complete and well rounded body of principles defining just and reasonable rates, just and unjust discrimination, dissimilarities of conditions and circumstances which warrant deviations from the long and short haul principle, and so on. Another chapter is devoted to the interpretation and construction placed by the courts upon the Act to Regulate Commerce and the various amendatory acts, showing how the power over rates originally claimed by the Commission has from time to time been whittled down by the courts until now nothing remains but the shavings. Along with this, however, has gone a recognition of the Commission's powers of inquiry, so that the Commission has by no means been reduced to a condition of impotence. The attitude of the courts toward combinations in restraint of competition, whether the restraint be reasonable or unreasonable, is also discussed. The final chapter is devoted to a discussion of proposed amendments to the Interstate Commerce Act and to proposed extensions of the powers of the Interstate Commerce Commission. The appendix contains copies of the charter of the Baltimore and Ohio Railroad Company, passed by the General Assembly of Maryland in 1827, the charter of the Southern Railway Company, filed in accordance with the statutes of the State of Virginia, June 18, 1894, the Massachusetts Commission Law, and the Interstate Commerce Act together with its amendments and a letter of the Interstate Commerce Commission relating to the so-called Elkins Law of 1903.

The attitude of the author is that of most students of economics, and it may be judged from one of his concluding paragraphs: "In the light of the "facts presented in this book it would seem both desirable and necessary that "the increase in power contemplated in the Cullom Bill should be granted. "However, if Congress does not see fit to do this, it is to be hoped that an "end will be put to the present delay in the execution of orders, and that the "unscrupulous manager will no longer be permitted to impose his code of "ethics upon the great majority of conscientious and just railway officials."

The book contains a mass of information likely to be much in demand this winter among those interested in railway legislation now under consideration by Congress.

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LECTURES ON THE RELATION BETWEEN LAW AND PUBLIC OPINION IN ENGLAND DURING THE NINETEENTH CENTURY. By A. V. Dicey, K. C., B. C. L., London: Macmillan & Co., New York: The Macmillan Co., 1905, pp. xx, 503.

This latest work of the Vinerian Professor of English Law, at Oxford, is said by its author to be not 'a work of research but rather a work of inference or reflection.' We wonder if the term "research" has acquired in Oxford the connotation that seems to be the current one in some other quarters of the learned world; namely, a work resulting in a product which is true, new and—no account? This book certainly shows a marked absence of the last of these characteristics. Perhaps the author would allow us to call it an original

contribution to knowledge. It possesses in a high degree that rare quality of power to grasp, with a firm hand, a multitude of details and to present them in such a way as to show essential fundamental principles. It shows this quality of the author's mind even more strikingly than does his "Law of the Constitution," and in this regard is to be put in the same category with another classic of the Oxford School; namely, Bryce's "Holy Roman Empire." If the young men whom we send to Oxford can bring back to our law schools in America a little of this spirit, we of the west shall feel that Cecil Rhodes did not live in vain.

The substance of the book was originally presented as a course of lectures at Harvard, in 1898, and in its final form it is dedicated to President Eliot and the professors of the Harvard Law School. After a preliminary clearing away of the ground in the opening lectures, on the relation between law and public opinion, the characteristics of law making opinion in England, and the influence of the development of democracy on legislation, the author presents his theme by considering the three main currents of public opinion: (I) The Period of Old Toryism or Legislative Quiescence (1800-1830). (II) The Period of Benthamism or Individualism (1825-1870). (III) The Period of Collectivism (1865-1900). The term "collectivism" is used by the author in place of the term socialism "as a convenient antithesis to individualism in the field of legislation." This main thesis of the book is followed by a very interesting discussion of counter-currents and cross-currents of legislative opinion, the counter-currents being those that actually oppose, the cross-currents those that deflect the reigning legislative faith from its natural course. Not the least interesting part of the book is the final chapter on the relation between legislative opinion and general public opinion, showing the influence of convictions of individuals, such as Harriet Martineau, Charles Dickens and John Mill.

The book throughout has the charming eye-opening effect characteristic of a work that has the touch of genius about it. It states our unexpressed thought for us and makes us wonder why we have not uttered it before. This is shown in the discussion of the relation of the Benthamite period to the Blackstonian period. To one reading the law books of the last century, the virulence of utterance of the Anti-Blackstonians seems somewhat surprising. One hardly understands why Bentham's "Fragment on Government" should have had any great influence, insisting as it does upon a meaning in Blackstone's unfortunate bit of verbiage in regard to the social contract, when there was nothing in it but a rhetorical flourish, and nothing other than this meant by its author. The almost spiteful treatment of Blackstone by John Austin and his followers seems, too, quite without justification. While we may think with Austin that Blackstone was wrong in discussing what he calls "Rights of Persons" before the "Rights of Things" and may even think it is a mistake to use as a fundamental of classification the distinction between "Rights" and "Wrongs," still we can hardly see why Austin shows so much heat in the consideration of mere questions of classification, or why Bentham should get so virtuously indignant at Blackstone for stating theories of the origin of society in somewhat obscure terms and covering up the obscurity by rhetorical commonplaces. Professor Dicey shows that this violent antag-

onism to Blackstone is a deep-seated one of principle, that Bentham hates Blackstone because Blackstone is the defender of the old Tory optimism as to the laws of England, while Bentham is a true child of the Revolution in his desire to destroy the old and build up the new on the ruins, though Dicey makes it plain that the Benthamite doctrine finally prevailed not because of Bentham's iconoclasm but in spite of it, because Bentham's principle of utility offered a safe guide for law reform and kept the reformers from running aground on the revolutionary shoals of the French extremists. Bentham's opposition to Blackstone is of the spirit and not of the letter alone, and this feeling leads him into extravagance of statement when dealing with Blackstone even in the non-essentials. Austin as the follower of Bentham of course catches the acrimonious spirit of his master.

Dicey's portrayal of the trend of legislation explains, too, a number of apparent anomalies in the growth of law during the latter part of the century. Sir Henry Maine, in his Ancient Law, published in 1861, says, "the movement of progressive societies has hitherto been a movement from *Status to Contract.*" Maine was of course speaking at a time when the individualistic movement, which had expanded freedom of contract and correspondingly restricted the realm of status, was at its climax. Professor Dicey shows us that at the very time Maine was writing, the counter movement of collectivism had begun and during the last third of a century we find the direction of the general movement is reversed, and status has been growing at the expense of contract. How extensive the change has been in this direction is shown by the summing up in Chapter viii, on the trend of collectivist legislation, beginning with the Ten Hours Bill of 1847 and extending down to the legislation projected for 1904, until—to cite a passage from Morley's "Life of Cobden," quoted with approval by Dicey—we reach "the rather amazing result that in the country where socialism has been less talked about than in any other country in Europe, its principles have been most extensively applied." It may be noted that this tendency is not less evident in America than in England, though our rigid constitution seems to present a more unyielding barrier against progress in this line than does the flexible constitution of England.

The book throughout is filled with the most suggestive generalizations: "that public opinion not only creates law but that laws foster or create law-making opinion;" that "any deviations from the ordinary course of legislation correspond at bottom with some peculiar, it may be transitory fluctuations in public opinion;" that "the vices of compromise are as marked as its merits. Controversies, which are deprived of some of their heat, are allowed to smoulder on for generations and are never extinguished."

One of the most interesting sections of the book is the one on the "Effect of Judge-Made Law on Parliamentary Legislation," as illustrated by the history of the law of property of married women, showing how the struggle of the equity court to mitigate the severity of the common law concept, that the personality of the wife is merged in that of her husband, was finally crowned with success by the device of marriage settlements in trust. Then how parliamentary legislation adopted the principle governing the wife's "separate property" in the technical sense which that term had acquired in the

courts of equity, and thus secured for the daughters of the poor those rights which the court of chancery had secured for those women who enjoyed the advantage of a marriage settlement.

The book is one to be read through from cover to cover, including the appendices, by every one interested in historical or legal questions. Professor Dicey is another "lawyer with a style" of the type of his great predecessor in the Vinerian chair, or of Sir Henry Maine. His work, like that of Bryce, Pollock and others of the Oxford School, shows us, what we are so apt to forget, that high scholarship and clearness of expression are not necessarily incompatible.

JOSEPH H. DRAKE.

THE LAW OF CONTRACTS by William Herbert Page, of the Columbus, Ohio, Bar, Professor of Law in the Ohio State University. Author of "Page on Wills." Three volumes. Cincinnati: The W. H. Anderson Co., 1905, pp. cccclxv, 3083.

This work is divided as follows: Volume I, Formation of Contracts; Volume II, Construction of Contracts; Volume III, Operation and Discharge of Contracts. It is an exhaustive treatise of the subject of contracts in the entirety. In his preface, which is exceedingly modest, brief and to the point, the author acknowledges his indebtedness to Sir William Anson for the general outline of the subject and then expresses the hope that "This work may be of value to the legal profession, that it may make the lawyer's unremitting toil somewhat lighter, and that it may, even in a slight degree, tend to what should be the ultimate goal of every sincere writer on legal subjects—that is, to place our American jurisprudence on a broad, scientific and natural basis."

While the author has adopted Anson's grand divisions of the subject and has treated most thoroughly the fundamental principles of contract law he has also done more than this. He has written at length on the various special topics, such as agency, partnership, negotiable instruments, common carriers and corporations. The chapter on contracts with public corporations is of special value. Every step essential to the making of such a contract is carefully considered, as well as the various conditions precedent to the fixing of corporate liability and the rights arising out of estoppel ratification and curative legislation.

The law of joint and several liability is considered under Construction of Contracts whereas partnership is considered under Parties to Contract. Just why this is done is not clear. Both subjects are generally treated under the subject of parties. This much is true, however, that whether the liability under a contract is joint or several is always a matter of construction.

There are a few topics in the law that for a long time have baffled scientific treatment. They are mistake, misrepresentation and fraud. Then in applying the law to them the courts sometimes use the terms warranty and condition carelessly and in the end there is nothing definite but the final judgment. Professor Page has assayed assistance in clearing up the confusion and with considerable success. This he does at the beginning of his work. His treatment of what he calls "Fraud and misrepresentation in the